

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Oded Besserglik v. Republic of Mozambique
(ICSID Case No. ARB (AF)/14/2)**

PROCEDURAL ORDER NO. 5

Mr. Makhdoom Ali Khan, President of the Tribunal
Hon. L. Yves Fortier PC, CC, OQ, QC, Arbitrator
Mr. Claus von Wobeser, Arbitrator

Secretary of the Tribunal
Ms. Celeste Mowatt

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1. On December 15, 2015, the Tribunal issued its Procedural Order No. 1. The procedural calendar included in Annex A provided that a hearing on jurisdiction and liability would be held from March 6 to 10, 2017 (with March 11, 2017 held in reserve). It was subsequently determined that Washington, D.C. would be the location of the hearing.
2. The President of the Tribunal held a pre-hearing organizational telephone conference with the parties on January 27, 2017. On the same day, prior to the commencement of the telephone conference, the Respondent transmitted an application requesting (i) a one-month postponement of the scheduled March 2017 hearing, (ii) the Tribunal to admit the third witness statement of Quintus van der Merwe, which was attached to its application, and (iii) the opportunity to obtain and file the testimony of Antonio Barradas. The Claimant transmitted a response to the Respondent's application objecting to the requested postponement of the hearing, arguing that the hearing should in any event proceed on the issue of jurisdiction, and objecting to the Respondent's request to file additional witness evidence of Quintus van der Merwe or Antonio Barradas. The Claimant additionally requested the opportunity to file an additional witness statement of the Claimant, Oded Besserglik, which it intended to submit with the Reply Memorial, but had inadvertently been omitted.
3. During the pre-hearing organizational telephone conference, the parties' provided initial comments relating to the above-referenced submissions and agreed to a briefing schedule to address their respective applications.
4. Further to the agreed briefing schedule, the parties' filed their responses to the other Party's January 27, 2017 application on February 3, 2017. The Claimant elaborated on its objection to the Respondent's request to file additional witness evidence, but agreed to the one-month postponement of the hearing requested by the Respondent. The Respondent maintained its request to file additional witness evidence and for a one-month postponement of the hearing, objected to the Claimant's request to file an additional witness statement alleged to have been omitted from the Claimant's Reply, and agreed to the Claimant's proposal to bifurcate the issues of jurisdiction and liability.

5. On February 7, 2017, having received the Claimant's agreement to postpone the hearing, the Tribunal confirmed that the March 2017 hearing dates were vacated. The Claimant was requested to confirm whether it maintained its position that jurisdiction should be bifurcated from liability.
6. On February 8, 2017, the Respondent stated its position that the proceeding should be bifurcated, regardless of the Claimant's position, and indicated that it had no further comments in response to the Claimant's letter of February 3, 2017.
7. On February 9, 2017, the Claimant stated its position that the question of jurisdiction should not be bifurcated from liability, in view of the Respondent's indication that a hearing on jurisdiction would be evidentiary.
8. On February 10, 2017, the Claimant filed a response to the Respondent's comments of February 3, 2017, further to the briefing schedule agreed during the telephone conference.
9. On February 17 2017, the Tribunal invited the parties to consult and indicate whether they were able to reach an agreement concerning the scope and duration of the hearing.
10. Through separate communications dated February 24, 2017, the parties informed the Tribunal that they were not able to reach an agreement on the scope and duration of the hearing. The Respondent requested an evidentiary hearing on jurisdiction and, in the alternative, an evidentiary hearing on jurisdiction and the merits. The Claimant requested an evidentiary hearing on jurisdiction and liability to last no longer than two weeks.
11. By letter of March 14, 2017, ICSID informed the parties of the Tribunal's decision that an evidentiary hearing would be held addressing both jurisdiction and liability; the duration of the hearing would be five days, with one day kept in reserve to provide for a one-day extension should it be required. The parties were also informed, through this ICSID letter, of the Tribunal's decision to give each party the opportunity to file additional witness evidence, further to their respective requests of January 27, 2017, and that each party would also be given the opportunity to file rebuttal witness evidence. Finally, the parties were

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invited to indicate whether they were available for a hearing from May 1 to 5, 2017 (with May 6, 2017 held in reserve).

12. The Claimant indicated that it was unavailable during the proposed hearing dates in May 2017, therefore, on March 22, 2017, the Tribunal invited the parties to indicate whether they were available for a hearing from August 7 to 11, 2017.
13. Having received the parties' respective communications on March 23 and 24, 2017, indicating their availability, the Tribunal confirms the hearing dates of August 7 to 11, 2017 (with August 12, 2017 held in reserve).
14. In view of the above, the Tribunal adopts the following revised procedural calendar:

Submission / Event	Date
Filing of Witness Evidence	Friday, April 28, 2017
Filing of Rebuttal Witness Evidence	Friday, May 26, 2017
Witness Notification	Friday, June 23, 2017
Pre-Hearing Organizational Meeting	Friday, June 30, 2017
Skeleton Arguments	Friday, July 7, 2017
Hearing on Jurisdiction and Liability	August 7-11, 2017 (with Saturday, August 12 held in reserve)

15. The parties are requested to inform the Tribunal on or before April 7, 2017 of their availability to participate in a pre-hearing organizational meeting, by telephone conference, on June 30, 2017.
16. All witness statements, documents and legal authorities submitted further to the above procedural calendar are required by the Tribunal to conform to the scope of the Hearing on Jurisdiction and Liability.

17. No further witness statements, documents or legal authorities will be admitted by the Tribunal for the Hearing on Jurisdiction and Liability after May 26, 2017, save in exceptional circumstances, after hearing the parties and, in particular, after giving the other party an opportunity to object.

[signed]

On behalf of the Tribunal
Makhdoom Ali Khan
President of the Tribunal
Date: April 4, 2017